

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

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Ejohnson

date: FEB 2 6 2002

to: Deborah Stadsklev, Technical Coordinator; Nancy Krantz, Manager,  
Case Processing Support

from: ERIC JOHNSON  
Attorney

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subject: 'Same Taxpayer' Treatment and Interest Accrual

[REDACTED], EIN [REDACTED]

[REDACTED], EIN [REDACTED]

**DISCLOSURE STATEMENT**

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

The following is in response to your memorandum submitted December 19, 2001. This memorandum is revised from the memorandum previously issued dated February 11, 2002, as a result of input from Chief Counsel National Office. The revisions do not change the result stated in the memorandum of February 11, 2002, but some of the supporting language has been changed.

**ISSUE**

Whether two corporations filing separate returns should be treated as the same taxpayer with respect to interest accrual on underpayments and overpayments under the circumstances described.

**CONCLUSION**

The corporations should not be treated as the same taxpayer with respect to interest accrual.

**ANALYSIS**

[REDACTED], Inc. ('[REDACTED]'), which

elected the possession tax credit under I.R.C. §936, was a wholly owned subsidiary of [REDACTED], Inc. ('[REDACTED]'). [REDACTED] was not included in [REDACTED]'s consolidated returns; although [REDACTED] otherwise qualified for inclusion on the consolidated returns of [REDACTED], a corporation that elects the possession tax credit is not eligible for inclusion on a consolidated return. I.R.C. §1504(b)(4).

For the tax years ended December 31, [REDACTED], December 31, [REDACTED], and December 31, [REDACTED] (for [REDACTED], [REDACTED] has a 52/53 week tax year ending or on about December 31), the Service adjusted the allocation of revenue/expense between [REDACTED] and [REDACTED]. The reallocation, to which the parties agreed, produced deficiencies for [REDACTED] of \$[REDACTED], \$[REDACTED], and \$[REDACTED] for tax years [REDACTED], [REDACTED], and [REDACTED] respectively, which were [REDACTED], and an overpayment for [REDACTED] of \$[REDACTED] for tax year [REDACTED], which [REDACTED] has requested be applied to offset the underpayments of [REDACTED].

Interest accrues on an underpayment from the date the underpayment arises (generally the payment due date of the underpayment tax year) until the underpayment is paid. I.R.C. §6601(a). Interest accrues on an overpayment from the date the overpayment arises (generally the payment due date of the overpayment tax year) until the overpayment is refunded. I.R.C. §6611(b)(2).

Under I.R.C. 6402(a) the Service 'may' credit an overpayment against an outstanding underpayment "on the part of the person who made the overpayment". (The Service is not required to make such a credit. Northern States Power Co. v. United States, 73 F.3d 764 (8<sup>th</sup> Cir. 1996), cert. denied, 519 U.S. 862 (1996).) Where the Service makes such a credit, the overpayment credit is applied retroactively as of the date the overpayment and underpayment periods first 'overlap', i.e. the later of the payment due date for the underpayment tax year or the payment due date for the overpayment tax year. No interest accrues for the taxpayer on the overpayment or against the taxpayer on the underpayment during the period, and to the extent, of the overlap. I.R.C. §§6601(f), 6611(b)(1).

Under I.R.C. §6621(d), enacted in [REDACTED], a net interest rate of zero applies for any period of overlapping

underpayment and overpayment amounts with respect to "the same taxpayer".

The Service if requested also may credit the overpayment of one taxpayer to the underpayment of another taxpayer. In such circumstances, the overpayment credit is applied to the underpayment only as of the date the Service makes the credit transfer. There is thus no netting of interest for the period the underpayment and overpayment overlap. The underpayment of the one taxpayer and overpayment of the other taxpayer accrue interest separately to the point when the Service administratively transfers the credit. Rev.Proc. 65-20, 1965-2 C.B. 1003.

██████████ and ██████████ argue that they should be treated as the same taxpayer for purposes of I.R.C. §§6402(a) and 6621(d). The argument is essentially 1) that the underpayments of ██████████ and the overpayment of ██████████ are transactionally related and 2) that ██████████ and ██████████ are related taxpayers and otherwise qualify for filing a consolidated return except that they are prevented by I.R.C. §1504(b)(4).

There is no basis for the argument presented by ██████████ and ██████████, and no basis in the law for treating ██████████ and ██████████ as the same taxpayer under I.R.C. §§6402(a) and 6621(d) under these circumstances. ██████████ and ██████████ are separate legal entities that file separate returns.

Please contact the undersigned at (651) 290-3473 ext. 245 with any questions.

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